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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Application Serial No.: 76-479,733
Mark: ZEN MOMENT
International Class: 3
Applicant: Trevco, Inc.
Date of Publication: August 5, 2003



08-11-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

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SHISEIDO COMPANY, LTD., :
:
Opposer, :
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v. :
:
TREVCO, INC., :
:
Applicant. :
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OPPOSITION NO. _____

Certificate of Mailing

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NOTICE OF OPPOSITION

Shiseido Company, Ltd. ("Opposer"), a corporation organized and existing under the laws of Japan, believes that it will be damaged by registration of the ZEN MOMENT mark shown in Application Serial No. 76-479,733 as applied for by Trevco, Inc. ("Applicant").

As grounds for Opposition, Opposer alleges:

1. Opposer is a corporation organized and existing under the laws of Japan.
2. Opposer is in the business of manufacturing, having manufactured, distributing, promoting, advertising, offering for sale, and selling a wide variety of cosmetic, fragrance, hair and body care products, and related products ("Opposer's Goods").
3. In connection with Opposer's Goods, Opposer is the owner of the ZEN trademark ("Opposer's Mark").
4. Opposer has used Opposer's Mark in interstate commerce in connection with Opposer's Goods since long prior to Applicant's date of application.

5. In connection with Opposer's Mark, Opposer is the owner of United States Trademark Registration No. 867,259 ("Opposer's Registration"), registered March 25, 1969, for makeup foundation, face powder, rouge, eye shadow, eye liner, mascara, lipstick, nail enamel and polish, hand and skin moisturizing creams and lotions, skin cleansing creams and lotions, lubricating night creams and lotions, perfumes, eau de cologne, bath oils, dusting powder, hair grooming oils, hair and scalp conditioning oils, permanent wave solutions, hair dyes, hair lacquer, hair rinse, depilatories, hair bleaches, personal deodorants, dentifrices, and toilet soaps, in International Classes 3 and 5.
6. Opposer's Registration is incontestable.
7. Throughout the years, Opposer has expended substantial amounts of money, time and effort in advertising, promoting and popularizing Opposer's Mark.
8. The trade, industry and public have throughout the years used, associated and attributed usage of Opposer's Mark with Opposer and Opposer alone, so that the trade in general and the purchasing public in particular have come to know and recognize Opposer's Mark and that Opposer's Goods originate from and belong to solely Opposer.
9. Opposer's Mark is a strong trademark and is famous in the United States and throughout the world, and has developed goodwill and a good reputation exclusive to Opposer.
10. Upon information and belief, Applicant is a Michigan corporation, with an address at 1950 Stephenson Highway, Troy, Michigan 48083.

11. The purported ZEN MOMENT trademark applied for in Applicant's application is confusingly and deceptively similar to Opposer's Mark, which Opposer has been using long prior to Applicant's application; hence, Applicant is not entitled to adopt, use or seek registration of the purported ZEN MOMENT trademark in connection with the goods identified in Applicant's application.
12. The goods identified in Applicant's application are identical, nearly identical, and/or closely related to Opposer's Goods sold under Opposer's Mark.
13. The goods covered by Applicant's application are of the type distributed and sold through the same channels of trade as Opposer's Goods, to the same class of purchasers as Opposer's Goods. Such goods would reasonably be expected by the trade and purchasing public to emanate from or be sponsored by the same source.
14. Opposer's Mark and Applicant's purported mark are nearly identical in appearance, connotation and pronunciation, so that contemporaneous use of the respective marks will create a likelihood of confusion, mistake or deception among the trade and consumers.
15. Because of the strength and fame of Opposer's Mark and because Applicant's purported mark is nearly identical thereto, any faults or imperfections in the goods of Applicant will reflect adversely on Opposer and its established goodwill and reputation, all to the detriment of Opposer unless this opposition is sustained.
16. The contemporaneous use by Applicant of ZEN MOMENT will dilute Opposer's rights and will eventually result in a lack of designation or indication of origin and

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a loss of distinctiveness and exclusivity in Opposer's Mark if Applicant is allowed to register its purported mark.

17. Opposer has superior and paramount rights as compared to Applicant, and Opposer has used Opposer's Mark in commerce continuously and from a time prior to any date claimed by or available to Applicant. Consequently, Opposer avers that confusion, mistake, deception, dilution, and blurring in the trade and in the minds of the purchasers as between Opposer's Mark and Applicant's purported mark, and as to the origin of their respective goods, will be likely and bound to occur with resulting damage to Opposer.


WHEREFORE, Opposer respectfully requests that the Opposition be sustained and that registration of ZEN MOMENT to Applicant be refused.

This Notice of Opposition is being filed in duplicate, as required by 37 C.F.R. § 2.104, along with the \$300.00 fee required by 37 C.F.R. §§ 2.101 and 2.6.

Respectfully submitted,

LACKENBACH SIEGEL, LLP

Dated: Westchester, New York
August 8, 2003

By: 
Howard N. Aronson
Geoffrey I. Landau
Attorneys for Opposer
One Chase Road
Scarsdale, New York 10583
(914) 723-4300